

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.654 of 2007

Rajeswaran

.. Petitioner

Vs

1. The Govt. of Tamil Nadu,
rep. by its Secretary to Government,
Prohibition & Excise Department,
Fort St. George,
Chennai 600009.

2. The District Magistrate and
District Collector,
Virudhunagar District,
Virudhunagar.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein calling for the entire records leading to the detention of the Petitioner's Cousin brother namely Thiru.Kumar @ D.Muthukumar, under Act 14/82 vide Detention order dated 27.3.2007 on the file of the 2nd respondent herein, made in Cr.M.P.No.14/2007 quash the same and consequently direct the respondents herein to produce the body and person of the detenu herein before this Hon'ble Court and thereafter set him at liberty.

For Petitioner : Ms.R.Subadra Devi

For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

The petitioner, who is cousin brother of the detenu, Kumar @ D.Muthukumar, son of Dharmar, who was incarcerated by order dated 27.3.2007 of the second respondent under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Sand Offender, has preferred this writ petition for issue of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 27.3.2007 in Cr.M.P.No.14/2007 against the petitioner's cousin brother, Kumar @ D.Muthukumar, son of Dharmar, now confined at Central Prison, Madurai, to set aside the same and to direct the respondents to produce the above said detenu before this Court and set him at liberty.

2. According to the detaining authority, viz., the second respondent, the ground case is said to have taken place on 17.3.2007 at 6.30 a.m. On receipt of reliable information that the sand was illicitly quarried and transported, the Tahsildar, Rajapalayam along with his officials attempted to stop a tractor and trailer bearing Registration TN-60-Z-3196 at Mudangiyar river. Without stopping the vehicle, the driver, the detenu herein, drove the vehicle rashly and even attempted to murder the Tahsildar. Based on the complaint of the Tahsildar, a case was registered in Crime No.211/2007 on the file of Rajapalayam North Police Station for the offence punishable under Sections 3 and 4 of the Tamil Nadu Property (Prevention of Damage and Loss) and Sections 353 and 307 I.P.C. The detenu was arrested and sent for judicial remand.

3. The second respondent, taking note of this case as a ground case, finding that there are two adverse cases pending against the detenu for the offence punishable under Section 21(I) of the Mines and Minerals (Development and Regulation) Act, and having satisfied that there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Sand Offender.

4. Since Ms.R.Subadra Devi, learned counsel for the petitioner challenges the impugned order of detention dated 27.3.2007 mainly on the ground of delay in considering the representation dated 9.4.2007 made on behalf of the detenu, we do not propose to go into the other aspects of the case.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6. In the case on hand, the impugned order of detention came to be passed on 27.3.2007. A representation was made to the detaining authority on 9.4.2007 and the detaining authority received the same on 16.4.2007. Ultimately, the representation was rejected by the Government on 21.4.2007. Even though the rejection letter was prepared on 21.4.2007 and sent on 21.4.2007 itself, the same was served on the detenu only on 7.5.2007. The delay in serving the rejection letter, viz., between 21.4.2007 and 7.5.2007 - a period of sixteen days, was highlighted by the learned counsel for the petitioner. Even though 21.4.2007, 22.4.2007, 28.4.2007, 29.4.2007, 1.5.2007, 5.5.2007 and 6.5.2007 happened to be public holidays, there is no convincing reply on behalf of the State for the delay in serving the rejection order on the detenu. We find some force as well as substance in this contention. We fail to understand as to why the matter was delayed for nine days (excluding Saturday and Sunday), between 21.4.2007 and 7.5.2007. There is absolutely no explanation for this delay.

7. At this juncture, a reference to the decision of the Apex Court in *Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad*, (1996) 3 SCC 194 is apposite:

"In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide *K.M. Abdulla Kunhi v. Union of India*, (1991) 1 SCC 476 .

9. In the instant case, there is a delay of nine days in considering the representation, as referred to above, and the same, in our considered opinion, vitiates the impugned order of detention. We are, therefore, inclined to allow this petition. The order of detention dated 27.3.2007 is quashed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

ATR

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Secretary to Government,
Govt. of Tamil Nadu,
Prohibition & Excise Department,
Fort St. George,
Chennai 600009.
2. The District Magistrate and
District Collector,
Virudhunagar District,
Virudhunagar.
3. The Superintendent,
Central Prison,
Madurai.
4. The Joint Secretary to Govt.,
Public (Law & Order),
Fort St. George, Chennai-9.
5. The Public Prosecutor,
High Court, Madras.

SCD(CO)
dcp/7.9

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